



KATHLEEN VINEHOUT

STATE SENATOR

**Testimony in support of SB 287
Committee on Transportation
Thursday, March 11, 2010**

Good morning Chairman Steinbrink and members of the Committee. Thank you for the hearing today on SB 287 transferring ownership and jurisdiction of a municipality's highways to an American Indian tribe or agency of the United States government.

Rep. Mark Radcliffe and I drafted this bill at the request of Brockway Township and the Ho-Chunk Nation.

Mission Road is a town road in Brockway Township. It is a primary thoroughfare for members of the Ho-Chunk Nation to access one of the Nation's housing developments. Mission Road is in disrepair and unfortunately as is all too common for our towns, Brockway does not have the necessary resources to make the necessary improvements.

Brockway Township and the Ho-Chunk Nation have worked together on an agreement to repair the road. Under this agreement, Brockway would voluntarily transfer custody and jurisdiction of Mission Road to the Ho-Chunk Nation, who will then make the necessary improvements.

The Ho-Chunk Nation plans to fund this project through the Federal Indian Reservation Roads Program and funds have been encumbered for this year. However, the Bureau of Indian Affairs determined that state law does allow such a transfer to take place. Without SB 287, Mission Road will remain in disrepair to the benefit of none.

SB 287 remedies this situation by authorizing a municipality to voluntarily transfer ownership and jurisdiction to a federally recognized American Indian Tribe or agency of the United States government. Brockway will be able to transfer the roadway to the Ho-Chunk Nation and will have additional resources freed for other roads in need of maintenance. The Oneida Tribe expressed concerns about the way the bill was originally drafted regarding interference with existing arrangements. The substitute amendment is an agreement among the tribes and would clarify three provisions – 1) the road would remain open to public access; 2) add a dispute resolution process would be added to the bill and 3) require a tribe or federal agency to follow state statutes if a transferred road were to ever be closed.

The passage of this bill will assure Mission Road will receive much needed improvements and members of the Ho-Chunk Nation will have a safer and more efficient access to the housing development.

Thank you for your time and attention to this matter.



HO-CHUNK NATION SUPPORTS SB-287/AB-424

Background

The Ho-Chunk Nation has been working with the town of Brockway in Jackson County on transferring one mile of town roadway to the federal government to be held in trust for the Nation. This stretch of road leads to a significant housing development for the tribe and the town has been unable to come up with the necessary funding for a number of years to make critical repairs. The road serves only tribal members. Brockway is predominantly rural and has a large percentage of land area under the Managed Forest Land (MFL) program, and thus has a diminished tax base.

Up until last year (2008) the BIA allowed these transfers to occur in Wisconsin and other states with little or no questions asked. This allowed tribes in Wisconsin to place transferred roadways into the federal Indian Reservation Roads Program (IRR) inventory and receive annual funding for construction and maintenance. As mentioned, the tribes take ownership of these roads in name only, it is actually the federal government that will own the roads and hold it in trust for the tribes. This is how any reservation or trust land is owned by tribes. These transfers did not happen on a frequent basis and not all tribes have been a party to a transfer.

In 2008, the BIA began conducting more due diligence before accepting these transfers. BIA was concerned that state statutes may not authorize municipalities to transfer and they were worried that tribes would take over these roads, spend the money to completely reconstruct them, and then the municipalities would want them back. An analysis of Wisconsin statutes by the BIA resulted in the suggestion that legislation be offered to correct this situation.

IRR Program

The Indian Reservation Roads program has been in existence since 1928. *"The purpose of the IRR Program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Indians and Alaska Natives, visitors, recreational users, resource users, and others, while contributing to economic development, self-determination, and employment of Indians and Alaska Natives."* 25 CFR Part 170. The program is part of the Federal Lands Highway Program and is jointly administered by the BIA and FHWA. Every tribe in Wisconsin participates to one degree or another in this program. Funding from this program is stable, has usually been increased during federal transportation reauthorization, and has never been decreased.

Mission Road in the Town of Brockway

Hundreds of tribal members live at the "Mission" housing development on Ho-Chunk trust land in the Town of Brockway in Jackson County. The main access route to these residences is Mission Road which intersects State Highway 54 just east of Black River Falls. The first mile of Mission Road after the intersection with Highway 54 is owned by the Town of Brockway. This section of the road is in desperate need of reconstruction. It poses an extreme safety hazard to anyone who travels it and the Ho-Chunk Nation wants to ensure that this road is improved.

The Town of Brockway, however, simply does not have the resources to accomplish the repair and maintenance of Mission Road. Elected representatives of the Nation have fielded many complaints regarding when it will be fixed, and there is much concern regarding safety and what can be done to repair the road.

Executive Offices

W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615
(715) 284-9343 Fax (715) 284-3127 (800) 294-9343

The Ho-Chunk Nation has been working with the Town and the Bureau of Indian Affairs (BIA) to find a solution and SB-287/AB-424 is part of that solution.

The Ho-Chunk Nation, with the cooperation and support of the BIA, and in agreement with the Town of Brockway, would like to take responsibility for Mission Road by having the Town transfer its ownership of the road to the Nation. The road would be held in trust for the Nation by federal government through the BIA. However, current state statutes do not specifically allow for a municipality to transfer ownership of a road to an Indian tribe or an agency of the United States. SB-287/AB-424 would allow this transfer to occur and for the road to finally be fixed properly.

The key word here is "allow". Under SB-287/AB-424, the municipality, any municipality, would have to agree to such a transfer; if a municipality and a tribal government can not agree to the terms of a transfer, it would not occur. Without this type of transfer, the Ho-Chunk and Town of Brockway may not be eligible for the federal resources necessary to repair and maintain Mission Road.

The federal government has really come through for tribes in its support of road funding. All tribes in Wisconsin participate in the Indian Reservation Roads Program (IRR). Through this program tribes can access funding for road construction and maintenance projects. The Ho-Chunk Nation has the ability, if SB-287/AB-424 becomes law, to repair and maintain Mission Road.

In short, SB-287/AB-424 will allow for a cooperative agreement between local units of government and tribal government where both, and only where both agree, that such an agreement is their best interest to leverage federal funds for the repair and maintenance of needed roadways in Wisconsin.

Please join the Ho-Chunk Nation and the Town of Brockway in supporting this very limited measure that will provide increased and needed resources to this road for the safety and betterment of our state, local, and tribal communities.

Substitute Amendment to SB-287

The Ho-Chunk Nation agrees to accept the provisions of a substitute amendment to Senate Bill 287. The changes the sub makes to the original bill strengthens the position of municipalities and the state for transferring ownership and jurisdiction of roads, but the Nation believes that the legislation is still in the best interest of Tribal governments in Wisconsin.

The substitute amendment would require that the jurisdictional transfer agreement used to transfer ownership and jurisdiction contain: 1) a provision that the road remain open to public access; 2) a dispute resolution procedure; and 3) a provision that requires a tribe or federal agency to follow state statutes if a transferred road were to ever be closed. Although a tribe would not normally be required to adhere to these provisions under state law, by making them required provisions in an agreement that a tribe is party to, the tribe would be bound by the terms of the agreement and need to be in compliance thereof.

The Nation believes that these provisions could have been incorporated into jurisdictional transfer agreements under the original language of the bill by the parties, but nonetheless agrees to place these requirements into state statute.

The other minor change that the substitute amendment makes is to give the authority to transfer ownership and jurisdiction to the State and counties as well. Under the original bill, only cities, villages, and townships were given that authority.